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VIA EMAIL ONLY

Planning and Land Use Management Committee
Los Angeles City Council
City Hall, Room 395
Los Angeles, CA 90012
Clerk.plumcommittee@lacity.org

RE: Case Nos. CF-21-0021; DIR-2019-7742-TOC; ENV-2019-7743-CE

Honorable Councilmembers:

This firm represents Apartments on 8th I, LLC, a California limited liability company, Apartments on 8th II, LLC, a California limited liability company, Apartments on 8th III, LLC, a California limited liability company, owners as tenants in common (collectively, the "Owner" or the "Applicant") of that certain real property commonly referred to as 1517 to 1523 8th Street (the "Property") in the City of Los Angeles (the "City"). The Owner intends to improve the Property with a mixed-use multi-family development comprised of 1,150 square feet of ground floor retail with 60 residential dwelling units, inclusive of 6 extremely low income dwelling units (the "Project"). The Project will result in a net addition of 6 affordable housing units to the City's affordable housing stock. The units currently existing on the Property are single family dwelling units subject to the City's Rent Stabilization Ordinance and, therefore, are not true covenanted affordable dwelling units.

The City, as lead agency under the California Environmental Quality Act ("CEQA"), determined based on substantial evidence in the record before you that the Project was exempt from CEQA review because it qualified for a Class 32 Urban Infill Exemption ("Exemption").[1] CEQA requires the Secretary of the Office of Planning and Research to prepare guidelines that shall include a list of classes of projects that have been determined not to have a significant

[1] California Code of Regulations Title 14, Chapter 3 ("CEQA Guidelines") Section 15332.

effect on the environment and that shall be exempt from CEQA.[2] One such class is Class 32, which consists of "in-fill projects" or projects that occur on within city limits on a project site of no more than five acres surrounded by urban uses.[3] In listing a class of projects as exempt, the Secretary (of the Office of Planning and Research) has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument might be made that they are potentially significant.[4]

On December 15, 2021, the Project's CEQA Exemption was appealed by the Coalition for an Equitable Westlake/MacArthur Park ("Appellant"). Appellant did not appeal the Project's underlying Transit Oriented Communities approval to the City's Planning Commission which is the final administrative appeal body, and any issues surround that approval are not procedurally before this Committee. Appellant filed a single page justification in support of the appeal. By contrast, the City's decision to adopt the Exemption is supported by: (i) a tree report assessing potential habitat impacts; (ii) an air quality study assessing potential air quality impacts; (iii) a noise study assessing potential noise impacts; (iv) a Los Angeles Department of Transportation ("LADOT") determination that the Project does not exceed LADOTs Vehicle Miles Traveled screening criteria; (v) and a report from City Planning assessing these reports and making all other necessary findings to support the Exemption. In total the City's determination is supported by approximately 209 pages of analytical material prepared by experts. Accordingly, the City's decision to adopt the Exemption is supported by substantial evidence in the record before you.

In addition to Appellant's short page count, the appeal does not contain a shred of evidence to support Appellant's contention that the Project may have a significant cumulative impact on the environment. Appellant simply lists a series of projects from 2017 to 2020 but completely fails to provide any evidence whatsoever to support a claim that these projects in conjunction with the Project will have cumulative impact that prohibits using the CEQA Exemption.[5] Providing a simple list of projects with absolutely no evidence or analysis of why cumulative impacts might occur is not sufficient evidence to invoke the cumulative impact exception to the Exemption. Appellant does not provide any "*substantial evidence showing a reasonable possibility* of adverse environmental impact sufficient to remove this project from the categorically exempt class."[6] In applying the substantial evidence standard, which we believe applies to this case,[7] "a court will uphold an agency's decision if there is *any* substantial evidence in the record that there will be *no* significant effect on the environment."[8] The City environment file contains 209 pages of substantial evidence that the Project will have *no significant environmental effect*. Appellant has failed to provide any substantial evidence to the

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[2] California Public Resources Code Sections; 21080(b)(9), 21083 and 21084(a)
[3] *Berkeley Hillside Preservation v. City of Berkeley* 60 Cal. 4th 1086 (2015)
[4] *Id* at 1104.
[5] CEQA Guidelines Section 15300.2(b) provides that all classes of Categorical Exemption cannot be when the cumulative impact of successive projects of the same type in the same place, over time is significant.
[6] City to Robinson at 957.
[7] See *Berkeley Hillside Preservation v. City of Berkeley* 60 Cal. 4th 1086 (2015) ; See also *Fairbank v. City of Mill Valley* 75 Cal. App. 4th 1243 (1999).
[8] See *Robinson v. City of and County of San Francisco* 208 Cal. App. 4th 950 (2012) at 957.

contrary. Accordingly, this Committee must uphold the Planning Department's decision to adopt the CEQA Exemption for the Project.

Even if the more environmentally rigorous (i.e., less deferential to the local decision maker) fair argument standard applied, Appellant has not made a fair argument supported by substantial evidence that the cumulative exception to the Exemption applies on this case.[9] In fact, Appellant has neither made any argument nor provided any evidence (let alone evidence that is substantial) in support of Appellant's contentions. Simply providing a list of projects from 2017 to 2020 is not a fair argument supported by substantial evidence that there may be a cumulative environmental effect.[10]

Alternatively, the City's decision to adopt the CEQA Exemption is supported by expert reports and analysis of potential cumulative impacts. For example, the Project's air quality study contains a robust cumulative air quality impact analysis that correctly applies the South Coast Air Quality Management District threshold that if Project level air quality impacts are less than significant then cumulative impacts are also considered less than significant. Similarly, the Project's noise report also contains a robust cumulative noise analysis that correctly concludes the Project's noise impacts are not cumulatively considerable. As noted earlier, LADOT determined that the Project was under LADOT's screening thresholds for further Vehicle Miles Traveled analysis and thus will not have cumulative impacts.[11] Appellant utterly fails to provide any evidence to refute the City's findings in the record before you. Therefore, even under a fair argument standard, the appeal must be rejected.

Moreover, Appellant's list of past, present, and future projects misapplies CEQA's cumulative analysis in the context of an Exemption because the cumulative exception applies only when successive projects of the same type in the same place, over time is significant.[12] The appeal does not make clear that any of the projects on the list are of the same type. Appellant simply lists addresses and distances but does not provide any evidence of the type of project. Appellant apparently would like this Committee to speculate on project type. Moreover, courts have held that the same place refers "to an area whose size and configuration depend on the nature of the potential environmental impact of the specific project under consideration."[13] For example if noise is under consideration "the area to be considered would be that within which the noise could be expected to be audible."[14] Appellant's list includes project that mostly range from 0.6 to 2 miles away from the Property. The Property's vicinity is highly urbanized and the intervening area between the Property and those sites is built out with numerous structures that would attenuate noise. Only 2 of the listed sites are under 0.3 miles. The closest project on Appellant's list (1532 Cambria Street, which is 900 feet away) was issued a certificate of occupancy on October 9, 2020 and cannot combine with Project construction to have cumulative noise impact. Other than listing distances, Appellant's contentions do not make the legally

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[9] *Id* at 957 – 958.
[10] *Id.*
[11] LADOT Transportation Assessment Guidelines, July 2020.
[12] CEQA Guidelines Section 15300.2(b).
[13] *Robinson v. City and County of San Francisco* at 959.
[14] *Id.*

necessary logical connection how these projects are considered to be in the same place for purposes of the cumulative impact exception to the City's adoption of the Exemption.

The appeal is so completely devoid of any factual evidence that the Appellant's veracity must be questioned. These legally inaccurate, factually unsupported, and evidentiary deficient allegations are nothing more than a delay tacit designed to force the Applicant to reconsider Project implementation. The appeal is frivolous at best or, in the worst case, arises from malicious intent. In the future, the City Planning Department must prohibit acceptance of clearly frivolous appeals that only serve to delay construction of desperately needed housing and affordable housing. The City Planning Department should also be skeptical of future appeals from the Appellant. Other than addresses and distances, Appellant does not attempt to make a good faith argument how or why the Project may have significant cumulative impacts. Accordingly, this Committee must reject the appeal in its entirely and adopt the Project's CEQA Exemption.

Very truly yours,

Michael Gonzales
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